

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JACK E. FURAY	:	CASE NO.: 2:12-cv-01048-EAS-NMK
Plaintiff,	:	Judge Edmund A. Sargus
v.	:	Magistrate Judge Norah McCann King
LVNV FUNDING, LLC, ET AL.,	:	
Defendants.	:	

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**RESPONSE OF DEFENDANTS  
TO PLAINTIFF'S MOTION TO DISMISS (Doc. # 27)**

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Now come Defendants LVNV Funding, LLC and Resurgent Capital Services, LP, by counsel, and provide the following for their response to Plaintiff's Motion to Dismiss (Doc. # 27).

Defendants respectfully request that the Court either dismiss the case with prejudice, or if dismissed without prejudice, then place the condition on the dismissal that if Plaintiff re-files the complaint, the costs (including the costs for Plaintiff's deposition transcript) incurred by Defendants in this action be assessed against Plaintiff. Early in the case, Defendants attempted to avoid all costs and attorney fees incurred in this case by writing to Plaintiff to inform him of the futility of his claim. *See* Exhibit 1 attached hereto. Plaintiff refused to dismiss his case, and knowingly pressed forward in light of contrary law, forcing Defendants to incur defense costs and attorney fees in this meritless case. Now that Defendants have completed discovery and filed a Motion for Summary Judgment, Plaintiff seeks a dismissal.

Pursuant to Fed. R. Civ. P. 41(A) this Court may allow Plaintiff to dismiss this case with conditions as defined by this Court.

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper . . . .

Fed. R. Civ. P. 41(a)(2).

Defendants respectfully request that the Court set the following terms for the dismissal: (1) enter an order dismissing the case with prejudice, or (2) enter an order dismissing the case without prejudice, with the condition that if Plaintiff re-files the complaint, the costs (including the costs for Plaintiff's deposition transcript) incurred by Defendants in this action be assessed against Plaintiff. Defendants do not waive their right (under 15 U.S.C. 1692k or otherwise) to seek attorney's fees from Plaintiff in a later filing.

Respectfully submitted,

/s/Boyd W. Gentry  
Boyd W. Gentry (0071057)  
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*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I certify that the foregoing document was placed in the mail (via prepaid postage) on August 21, 2013 to be served to the following:

Jack E. Furay  
PO Box 88  
Lewis Center, OH 43035

/s/Boyd W. Gentry  
Boyd W. Gentry (0071057)